IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.724 OF 2005
IN
COMPANY PETITION NO.806 OF 1981

M/s.Bellapur Sugar & Allied Ind. Ltd. Petitioner

versus

Krishnakant Gangaprasad Morarka Applicant

and

Shrfaraz Sheikh and others Respondents

Mr.Rao i/by Lex Consultanta for applicant.

Ms.Leena Patil for respondent no.2.

Ms.K.V.Gautam, Dy.O.L. present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15th June 2006

PC :

1. The applicants claiming to be creditors of the company have applied for following reliefs :-

a) The Hon'ble Court be pleased to order and direct Respondent No.1 and Respondent No.2 and/or their agent, servant, family member and all person claiming through them to handover vacant and peaceful possession of the said bungalow to the

Official Liquidator or any authorized officer or Official Liquidator, High Court Bombay.

b) The Hon’ble Court be pleased to order and direct the official Liquidator to expedite the liquidation proceedings of the company as provided under Companies Act 1956 and pay all creditors of the Company including the applicant herein.

d) The Hon’ble Court be pleased to order and direct the respondent no.1 and 2, each to pay Rs.10,000/- per month for illegal occupation of the part of the said bungalow from the date of occupation till vacant and peaceful possession of the property is handed over by the Respondent No.1 and 2."

2. Learned advocate appearing for the applicants submits that the Liquidator ought to have taken possession of an immovable property to which the company is prima facie entitled namely a bungalow known as "electricity bungalow" situate at 984, Gurudwara Road, Deolali Camp, Deolali, Nashik. In his submission, the company has been ordered to be wound up on 16th August 1989. On 3rd June 2004 a notice was given to the Liquidator by the applicants pointing out that this bungalow is property and asset of the company in winding up and should be taken into custody and possession. The same is being illegally occupied by respondents 1 and 2 and therefore, they are liable to be evicted therefrom. For the alleged illegal and unlawful occupation they are also

liable to pay compensation/damages.

3. Learned advocate for the applicant submits that respondents 1 and 2 are in part occupation and possession of this bungalow and therefore rest of the bungalow should definitely have been taken over in possession by the Official Liquidator.

4. With the assistance of learned advocate for the applicant I have perused the company application and affidavit in support. Firstly, the applicant relies upon a Deed of Assignment dated 20th March 2004 where the original petitioner has assigned to the applicant his right and interest under a decree dated 28th August 1974 but that is a money decree in summary suit filed by the original petitioner against the petitioner in the winding up petition. Secondly, all that the applicant would contend is that this bungalow belongs to the company but no documents of whatsoever nature muchless evidencing right, title and interest of the company in liquidation therein are either referred to or enclosed.

5. Reliance is placed upon minutes of meeting held in the Chamber of Deputy Official Liquidator

on 20th May 2005 at 11.00 a.m..

6. The Cantonment Board was represented by one of its Clerks and he produced certain documents. Minutes especially para 2 would not carry the matter any further because it records clearly that the company in liquidation had purchased the leasehold rights in respect of some of the properties. The bungalow is not specifically referred to therein. Be that as it may, the leasehold rights were purchased by the company in liquidation in the auction held by the Court Receiver. The lease period expired on 28th January 1973. There is nothing on record to show that the lease has been renewed in favour of the company in winding up. By placing reliance upon such minutes neither any plea can be held to be proved much less substantiated nor applicants version about right, title and interest of company in liquidation with regard to some properties can be accepted. Nothing prevents the applicant to proceed against the property for benefit of himself and all other creditors even at a later stage and if he is able to substantiate his pleas by producing necessary and relevant documents, the same would always be considered by the Official Liquidator.

7. In the present case, on a vague plea of the applicant no direction can be issued to the Official Liquidator. More so, when in the affidavit in reply filed by the Official Liquidator he has pointed out that he has taken charge of all assets and properties of the company in liquidation.

8. My attention is also invited to the affidavit in reply filed by respondent no.2 in which all contentions in the company application are denied. It has been specifically pointed out that Respondent no.2’s claim of tenancy has been substantiated by him by producing documents before Official Liquidator. This respondent has been residing there since last more than 50 years. Such being the case and when contentious issues are raised and it is not clear as to whether the property belongs to the company in winding up, no directions of the Official Liquidator can be granted. Company Application therefore, is, dismissed.

9. At this stage learned advocate says that part of the bungalow/property is in possession of the Official Liquidator. It is for the Official

Liquidator to take appropriate steps and seek such directions as are permissible in law with regard to the same. For the present, no directions are issued. The Official Liquidator has assured that inspection of records and proceedings in the winding up petition would be given to the applicant's advocate in the Liquidator's Office by prior appointment.

(S.C.DHARMADHIKARI, J.)